

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Writ Petition No.3432 of 2006

Mr.Prakash Govind Desai	Petitioner
Vs.	
Mrs.Pallavi Prakash Desai & anr.	Respondents
Mr.Niyaz Ahmad for	petitioner.
Mr.V.V.Palnitkar for	Resp.no.1.
Mr.A.H.Palekar, AGP for	Resp.no.2.

CORAM: B.H.MARLAPALLE, J.

June 12, 2006.

P.C.

1. Heard Mr.Ahmad, the learned counsel for the petitioner-husband. The respondent-wife has filed Special Civil Suit No.295 of 2004 for maintenance and separate residence under Section 18(1) and (2) as well as under Section 20 of the Hindu Adoption and Maintenance Act, 1956 before the learned Civil Judge, Senior Division at Thane. She has claimed past maintenance at the rate of Rs.3000/- per month for herself and Rs.2000/- per month for each of the two children from 21st August 1998 and for the subsequent period from the date of filing of the application she has prayed Rs.5000/- per month for herself and Rs.4000/- per month to each of the two children. In addition she prayed for the relief of providing separate residence for herself and the children along

with cost of Rs.25,000/- . In the said Suit she filed an application at Exhibit 5 and prayed for interim maintenance. The husband opposed the same by filing his reply cum written statement at Exhibit 16 but he did not dispute that the marriage was solemnised on 6/12/1998 at Dombivli and after the marriage they resided initially in the joint family and subsequently in Rashmi Dairy. Out of the said wedlock one son and one daughter were born. It was also not disputed that the wife was not residing in the matrimonial home from 21st August 1998. As per the wife her brother expired on 19th February 1998 in an accident and, therefore, she stayed in her parental home for about 13 days. On her return the husband started torturing her and she had no alternative but to leave the matrimonial home in August 1998.

. Evidence of both the parties was recorded and while deciding the quantum of interim maintenance granted to the wife, the Court has taken into consideration the Bank account extract of the husband at Exhibit 29 and also the returns submitted to the Income Tax office. Admittedly the husband is the proprietor of Ashtavinayak Dairy and the

balance-sheet of the said proprietary firm as on 31st March 2004 indicated that the cash balance lying in the account was to the tune of Rs.6,240/- but the total of the business indicated that it was about Rs.58,000/-. He had also shown the income of Rs.53,869/- in the concerned financial year in the income tax returns (1st April 2003 to 31st March 2004). In his say filed before the Court below the husband did not say anything about the maintenance for the children. He also did not point out that he has any other financial liability of maintaining other family members except saying that the criminal complaint filed by the wife regarding the cruelty came to be dismissed by the competent Court. The trial Court rightly did not take into consideration the order of the learned 3rd Jt. Judicial Magistrate, First Class at Kalyan in RCC No.508/1998.

. It is well known that the returns submitted to the Income Tax department show net income and it cannot be reflected from the passbook of the petitioner-husband. Keeping this factor in mind and the quantum of interim maintenance fixed by the trial Court, it is obvious that the same does not call for any interference in this petition filed under Article

227 of the Constitution. The trial Court has ordered to pay Rs.2000/- per month to the plaintiff-wife and Rs.1000/- per month to each of the two children.

. The learned counsel for the petitioner-husband relied upon judgment of this Court in the case of Rajashree @ Vanita Rajesh Dixit Vs. Rajesh Nagesh Dixit **[2006 (2) Bom.C.R. 416]**. The facts in the said case were duly taken into consideration by me and the same is not applicable in the instant case.

. The petition is rejected summarily.

(B.H.MARLAPALLE, J.)